

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COLQUEST ENERGY, INC.

and

Case 10-CA--25168--1

UNITED MINE WORKERS  
OF AMERICA, AFL-CIO

*May 15, 1991*  
DECISION AND ORDER

*By Chairman Stephens and Members McManus and Sullivan*  
On March 18, 1991, the General Counsel of the National Labor Relations

Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 10--RC--14023. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On April 15, 1991, the General Counsel filed a Motion for Summary Judgment. On April 18, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a notice of opposition on April 22, 1991, and a response to the Notice to Show Cause on May 2, 1991.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

## Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding. In its answer and brief to the Board, the Respondent asserts, as it did in the underlying representation proceeding, that the Board election which resulted in the Union's certification is invalid because of alleged union misconduct before and during the election, and that it was denied due process because the Board did not hold a hearing to resolve its objections.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

## Findings of Fact

## I. Jurisdiction

The Respondent, a Tennessee corporation, maintains an office and place of business in Clairfield, Tennessee, where it is engaged in the mining and sale of coal. During the calendar year preceding the issuance of the complaint, a representative period, the Respondent sold from its Clairfield mining operations coal valued in excess of \$50,000 directly to Kopper-Glo Fuels, Inc., which maintains an office and place of business in Clairfield,

Tennessee, where it is engaged in the processing and sale of coal. During the same period, Kopper-Glo Fuels, Inc. sold and shipped from its Clairfield plant coal valued in excess of \$50,000 directly to customers located outside the State of Tennessee. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

### A. The Certification

Following the election held on June 29, 1990, the Union was certified on January 18, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees including carrier operators, utility employees, shop employees, roof bolters, fire bosses, laborers, mechanics, tractor operators, miner operators, and maintenance employees employed at the Employer's facilities (Mines #1, #2, #3 and Machine Shop) in Clairfield, Clairborne County, Tennessee; EXCLUDING: All clerical and professional personnel and supervisors as defined in the Act. Also excluded are the independent truckdrivers.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. Refusal to Bargain

Since on or about January 28, 1991, the Union has requested the Respondent to bargain and, since on or about February 5, 1991, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

### Conclusions of Law

By refusing on and after February 5, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices

affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Colquest Energy, Inc., Clairfield, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Mine Workers of America, AFL--CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees including carrier operators, utility employees, shop employees, roof bolters, fire bosses, laborers, mechanics, tractor operators, miner operators, and maintenance employees employed at the Employer's facilities (Mines #1, #2, #3 and Machine Shop) in Clairfield, Clairborne County, Tennessee; EXCLUDING: All clerical and professional personnel and supervisors as defined in the Act. Also excluded are the independent truckdrivers.

(b) Post at its facility in Clairfield, Tennessee, copies of the attached notice marked "'Appendix.'"<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.      May 15, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Mine Workers of America, AFL--CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees including carrier operators, utility employees, shop employees, roof bolters, fire bosses, laborers, mechanics, tractor operators, miner operators, and maintenance employees employed at the Employer's facilities (Mines #1, #2, #3 and Machine Shop) in Clairfield, Clairborne County, Tennessee; EXCLUDING: All clerical and professional personnel and supervisors as defined in the Act. Also excluded are the independent truckdrivers.

COLQUEST ENERGY, INC.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 101 Marietta Tower, NW, Suite 2400, Atlanta, Georgia 30323-3301, Telephone 404--331--2886.